

R E M A R K S

Claim 7 is amended to provide antecedent basis for the term "liquid collector," in response to the Examiner's alert detection of that informality as set forth at Item 7 of the Official Action. That amendment is properly entered after final rejection as it requires no further consideration or search, and is made in response to an objection posed in the final rejection.

Claims 7 and 8 were rejected under the second paragraph of 35 USC §112 as allegedly being indefinite, not only for the antecedent basis issue addressed above but also as allegedly failing to "clearly identify and positively recite any processing step(s)." The rejection is respectfully traversed as to this latter point.

Claim 7 recites, *inter alia*, "selectively generating different gas flow conditions in at least two of said exhaust levels." That is a clearly and positively recited processing step.

The dependent claim 8 further limits claim 7 by specifying that the different gas flow conditions of claim 7 are selected in a way to achieve substantially the same gas pressure adjacent to the rotating substrate above and below said substrate.

Thus, claim 8 further qualifies the "selectively generating" step of claim 7. We note in this regard that a

dependent method claim need not recite an additional step, but may instead qualify a step previously recited. More generally, there is no requirement that a method step be set forth in gerund form.

Therefore, it is believed that claims 7 and 8 as they now appear in the case are suitably definite, and withdrawal of the rejection of those claims under the second paragraph of 35 USC §112 is accordingly respectfully requested.

Claims 1, 2 and 4-6 were rejected as allegedly being obvious over Sumnitsch (US 4,903,717) in view of JP 2002-305177 (with US 2003/0140949 being relied upon as an English translation of JP 2002-305177).

Claims 1 and 3 were rejected as allegedly being obvious over DE 198 07 460 in view of Sumnitsch in further view of Nishizawa (US 4,871,417).

Claims 7 and 8 were rejected as allegedly being obvious over DE 198 07 460 in view of Sumnitsch in further view of JP 2002-305177 (with US 2003/0140949 being relied upon as an English translation of JP 2002-305177).

Those rejections are respectfully traversed, for the following reasons.

The final rejection notes applicant's previous arguments that the proposed combinations of references would not have produced an apparatus or method in which the

different exhaust levels would be individually controlled. The final rejection does not dispute the accuracy of that contention, and does not indicate that such apparatus and method would be allowable over the prior art of record; instead, the final rejection repeats the previous rejections solely on the basis that this feature is allegedly not claimed.

However, claim 1 recites "at least one exhaust influencing means (71), which is associated with at least one of said at least two exhaust levels, for selectively varying gas flow conditions in at least one of said at least two exhaust levels (E1, E2)."

That language in fact does require that the recited means is capable of performing the function of controlling the exhaust levels individually.

First, when the claim language is read in light of the specification, as it must be, it is clear that the term "selectively" has the same meaning as "individually" in the context in which it is used. Indeed, if this were not the case, then the result would be to read the term "selectively" out of the claim altogether, which would be improper.

As was recently held by the Federal Circuit in the case of *In re Suitco Surface*, 603 F.3d 1255 (Fed. Cir. 2010):

The broadest-construction rubric coupled with the term "comprising" does not give the PTO an unfettered license to interpret claims to embrace anything

remotely related to the claimed invention. Rather, claims should always be read in light of the specification and teachings in the underlying patent. 603 F.3d at 1260.

Second, the "exhaust influencing means" of claim 1 is recited using the means-plus-function format of 35 USC §112, ¶6, which requires that the recitation be interpreted to cover the corresponding structure described in the specification, and equivalents thereof. As that corresponding structure does indeed control the exhaust levels individually, it follows that also under this second rationale the claims must be so construed.

Similarly, Claim 7 recites "selectively generating different gas flow conditions in at least two of said exhaust levels." Again, when that language is interpreted in light of the specification, as it must be, it is clear that individual control of the exhaust levels is required in the claim. As with claim 1, it bears noting that the position taken in the final rejection would have the effect of reading the term "selectively" out of the claim altogether, which would be improper.

As neither Sumnitsch nor Sugimoto nor DE 198 07 460 nor Nishizawa nor any proper combination of these references discloses or suggests this feature of the present claims, it is believed that the present claims are allowable in relation to that art.

Applicants believe that in light of the present amendment and the foregoing remarks, all claims are in condition for allowance.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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